

GAHC010183612023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4757/2023

MUKTAR HUSSAIN
S/O HAFIZ UDDIN R/O VIL. LANGIA P.O. JENGONI P.S DHING PIN 782122
DIST NAGAON ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM PANCHAYAT AND RURAL DEVELOPMENT DEPTT. DISPUR
GUWAHATI 6 DIST. KAMRUP (M) ASSAM

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPTT
ASSAM PANJABARI GUWAHATI 37

3:THE NAGAON ZILLA PARISHAD
REP BY THE CHIEF EXECUTIVE OFFICER NAGAON ASSAM PIN 782122

4:THE BATADRAVA ANCHALIK PANCHAYAT
REP. BY ITS PRESIDENT NAGAON ASSAM PIN 782122

5:THE EXECUTIVE OFFICER
BATADRAVA ANCHALIK PANCHAYAT NAGAON ASSAM PIN 782122

6:THE PRESIDENT
BATADRAVA ANCHALIK PANCHAYAT NAGAON ASSAM PIN 782122

7:AMRAN HUSSAIN LASKAR
S/O SAMAR ALI R/O VIL. HIDUBI P.O. BATAMARI P.S BATADRAVA PIN
782122 DIST. NAGAON ASSA

Advocate for the Petitioner : MR. A SARMA

Advocate for the Respondent : SC, P AND R.D.

WP(C)/7469/2023

RAIS UDDIN AHMED
S/O LATE TAMIJ UDDIN

RESIDENT OF VILLAGE LANGIA
PO JENGANI
PS DHING
DIST NAGAON
ASSAM 782122

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR GUWAHATI 781006

2:THE NAGAON ZILLA PARISHAD
REPRESENTED BY THE CHIEF EXECUTIVE OFFICER
PO AND PS NAGAON
DIST NAGAON
ASSAM 782001

3:THE CHIEF EXECUTIVE OFFICER
NAGAON ZILLA PARISHAD
PO
PS AND DIST NAGAON
ASSAM 782001

4:THE BATADRAVA ANCHALIK PANCHAYAT

REPRESENTED BY THE EXECUTIVE OFFICER
PO DHING
PS DHING
DIST NAGAON
ASSAM 782123

5:THE EXECUTIVE OFFICER
BATADRAVA ANCHALIK PANCHAYAT
PO AND PS DHING
DIST NAGAON

ASSAM 782123
6:AMRAN HUSSAIN LASKAR
S/O SAMAR ALI

RESIDENT OF VILLAGE HIDUBI PO BARAMARI
PS BATADRAVA
DIST NAGAON
ASSAM 782122

Advocate for : MR. M K HUSSAIN
Advocate for : SC
P AND R.D. appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

11.01.2024

Heard Shri KN Choudhury, learned Senior Counsel assisted by Shri AD Choudhury, learned counsel for the petitioner in WP(C)/4757/2023 as well as Shri MK Hussain, learned counsel for the petitioner in WP(C)/7469/2023.

2. Also heard Shri NK Dev Nath, learned Standing Counsel, Panchayat and Rural Development (P&RD) Department whereas the private respondent in both the writ petitions is represented by Shri BC Das, learned Senior Counsel assisted by Shri DA Kaiyum, learned counsel. The learned Standing Counsel of the Department has also produced before this Court written instructions as well as copy of the resolution adopted in the meeting held on 23.06.2023 containing the impugned decision.

3. The matters pertain to settlement of the Balisatra Bi-weekly Market in the district of Nagaon which was published through a Tender Notice dated 29.04.2023.

4. It is the case of the petitioners that pursuant to the aforesaid tender notice, they had participated in the same and submitted their respective bids. They had also relied upon Clause 10 of the aforesaid tender notice as per which, in the event their bids were found to be the highest, they would be afforded 3 days time to submit those documents.

5. Shri Choudhury, learned Senior Counsel for the petitioner-Md. Muktar Hussain has submitted that the price offered by his client is Rs. 1,70,00,000/- whereas the offer of the private respondent is for an amount of Rs. 1,52,00,000/-. The petitioner in WP(C)/7469/2023 has made an offer of Rs.1,38,00,000/-.

6. It is submitted on behalf of the petitioners that if the documents offered by the respective parties are strictly examined, it would be revealed from the comparative statement that both the private respondent and the petitioner-Md. Muktar Hussain did not fulfill all the requirements of submitting documents. However, it is submitted that when the tender condition itself provided for granting 3 days period to submit the documents, it was obligatory on the part of the respondent authorities to make an assessment of the price bid for those tenderers who, otherwise have fulfilled the requirement of the tender conditions. It is further submitted that in matters of distribution of State largesse which are meant for fetching revenue, the price offered by a party is a relevant factor which is not liable to be ignored and the difference in the price offered is Rs. 18,00,000/-.

7. Shri Dev Nath, learned Standing Counsel of the Department has, however, justified the impugned decision by submitting that the Clause 10 which has been relied upon by the petitioner was put on hold by a judicial order and therefore, the bid of the petitioners was not considered.

8. The minutes of the meeting dated 23.06.2023, a copy of which has been placed on record, however, does not state anything with regard to the deficiency of the bid of the private respondent.

9. Shri Das, learned Senior Counsel for the private respondent has, however, submitted that the bid of his client was the valid highest bid as there was no deficiency in submission of the relevant documents. He further submits that for documents wherein there is a comment of non-submission are not relevant documents and therefore, no fault can be attributed with the impugned decision not to settle the Market in question with the petitioners but with the private respondent vide the impugned order dated 23.06.2023.

10. Upon hearing the rival contentions and on perusal of the materials on record, the comparative statements of the respective bidders would disclose that though certain documents appear not to have been submitted by the petitioner with the bid, there is also deficiency on the part of the private respondent who has been offered the settlement. The petitioner has given an explanation that Clause 10 of the tender conditions would not permit rejection of a bid *per se*, when all other documents have been submitted by the petitioner and in respect of only those documents which are covered by the aforesaid clause have not been submitted. It is submitted that the petitioner was not

made aware of the fact that the authorities would not take the relevant Clause 10 into consideration because of some court's order.

11. Be it that as it may, this Court has noticed that deficiency in documents is there both in the bids of the petitioner-Md. Muktar Hussain as well the private respondent. The difference in the price offered which is Rs. 18 lakhs cannot be termed to be a minor difference especially in matters of distribution of State largesse which are meant primarily to fetch revenue for the State.

12. This Court in **WP(C)/3314/2019 (Malegarh Gobindapur Fishery Cooperative Society Ltd. Vs. State of Assam &Ors.)** has held that in matters of distribution of State largesse which are meant for fetching revenue, the price offered is of paramount importance.

13. Under the aforesaid facts and circumstances, this Court is of the opinion that interest of justice would be served by directing the respondents authorities to redo the exercise of settlement by giving the petitioners and the private respondent to make good any deficiency in their documents within a period of 5 days from the date when the authorities would notify. It is, however, made clear that the parties cannot make any variations in the price quoted.

14. Consequently, the impugned settlement order dated 23.06.2023 is set aside and a fresh settlement be offered to the valid highest bidder in accordance with law. It is also observed that since the settlement period is for 1 year, the aforesaid exercise be undertaken and completed within a period of 3 weeks from the date of receipt of a certified copy of this order.

15. Both the writ petitions accordingly stand disposed of.

JUDGE

Comparing Assistant